

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

ISA BRITTAIN, WILLIE DUFFIE, BEULAH )  
HEIGHTS BIBLE COLLEGE, INC., )  
ANDERSON B. BURCH, BUTLER GLIDDEN )  
COOPER, LLC, STEVE CARR, KRISTIN )  
COOPER AND SANJA COOPER, JAMIESON )  
COX, FELITA A. DANIELY AND THE ESTATE )  
OF MARY L. GORDON, CHARLES )  
JACKSON, JR., LEAH LESESNE AND ROBERT )  
LESESNE, JR., POINT PROPERTY, LLC, )  
ROBINSON STEPHENS, INC., SAAMI, LLC, )  
SOHEILA SAHEBDIVANI, and, WOODROW )  
PROPERTIES, LLC, )

*Plaintiffs,*

vs.

THE UNITED STATES OF AMERICA,

*Defendant.*

Case No. 18-00342

Judge: Lydia Kay Griggsby

**AMENDED COMPLAINT**

**JURISDICTION**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1494(a)(1) (“Tucker Act”) because this action presents a claim against the United States which is founded upon the Constitution and Statutes of the United States.

2. Plaintiffs’ claims are based upon 1) The Fifth Amendment to the United States Constitution prohibiting the taking of private property for public use, without just compensation; 2) The National Trails System Act Amendments of 1983; 16 U.S.C. § 1247(d) (“Trails Act”); 3) The Tucker Act, 28 U.S.C. § 1491(a) (“Tucker Act”); and 4) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654(c) (2000).

**COUNT I**  
**(TAKINGS CLAIM)**

3. CSX Transportation, Inc. formerly owned an easement for railroad purposes, extending from milepost XXC 0.0, which begins at the switch to the Norfolk Southern, Oakland Junction near the Ormewood Station, and ends at milepost XXC 4.4 near Glenwood Ave. SE, a distance of 4.40 miles in the City of Atlanta, Fulton County, Georgia (the “Railroad Line”).

4. The easement lay across property owned by Plaintiffs.

5. Upon abandonment of the easement and/or authorization of use beyond the scope of the easement, Plaintiffs’ property would have been unburdened by any easement.

6. Plaintiff Isa Brittain owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Isa Brittain is located in Fulton County, Georgia, and includes parcel number 14 008800040093, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

7. Plaintiff Willie Duffie owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Willie Duffie is located in Fulton County, Georgia, and includes parcel number 14 008800020426, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

8. Plaintiff Beulah Heights Bible College, Inc. owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Beulah Heights Bible College, Inc. is located in Fulton County, Georgia, and includes parcel number 14

001100010056, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

9. Plaintiff Anderson B. Burch owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Anderson B. Burch is located in Fulton County, Georgia, and includes parcel number 14 002200080767, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

10. Plaintiff Butler Glidden Cooper, LLC owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Butler Glidden Cooper, LLC is located in Fulton County, Georgia, and includes parcel numbers 14 008800040051 and 14 008800020152, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

11. Plaintiff Steve Carr owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Steve Carr is located in Fulton County, Georgia, and includes parcel number 14 002200060371, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

12. Plaintiffs Kristin Cooper and Sanja Cooper owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Kristin Cooper and Sanja Cooper is located in Fulton County, Georgia, and includes parcel number 14 008800020178, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

13. Plaintiff Jamieson Cox owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Jamieson Cox is located in Fulton County, Georgia, and includes parcel number 14 008800020079, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

14. Plaintiffs Felita A. Daniely and The Estate of Mary L. Gordon owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Felita A. Daniely and The Estate of Mary L. Gordon is located in Fulton County, Georgia, and includes parcel number 14 008800040085, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

15. Plaintiff Charles Jackson, Jr. owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Charles Jackson, Jr. is located in Fulton County, Georgia, and includes parcel number 14 008800020186, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

16. Plaintiffs Leah Lesesne and Robert Lesesne, Jr. owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Leah Lesesne and Robert Lesesne, Jr. is located in Fulton County, Georgia, and includes parcel number 14 008800020129, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

17. Plaintiff Point Property, LLC owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Point Property, LLC is located in

Fulton County, Georgia, and includes parcel number 14 010600100234, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

18. Plaintiff Robinson Stephens, Inc. owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Robinson Stephens, Inc. is located in Fulton County, Georgia, and includes parcel number 14 0073 LL0012, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

19. Plaintiff Saami, LLC owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Saami, LLC is located in Fulton County, Georgia, and includes parcel number 14 010500040068, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

20. Plaintiff Soheila Sahebdivani owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Soheila Sahebdivani is located in Fulton County, Georgia, and includes parcel number 14 005500130273, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

21. Plaintiff Woodrow Properties, LLC owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Woodrow Properties, LLC is located in Fulton County, Georgia, and includes parcel number 14 010600100408, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.

22. On February 6, 2018, the Surface Transportation Board (“STB”) issued a Notice of Interim Trail use (“NITU”) relating to the following segment of the Railroad Line: between milepost XXC 0.0 and milepost XXC 4.4, a distance of 4.40 miles, in Fulton County, Georgia.

23. But for operation of the Trails Act, Plaintiffs would have the exclusive right to physical ownership, possession, and use of their property free of any easement for recreational trail use or future railroad use.

24. By operation of the Trails Act, the United States took the Plaintiffs’ property which it is Constitutionally obligated to pay just compensation.

25. Plaintiffs owned the aforementioned property on the date of the taking, February 6, 2018, and are therefore proper claimants for compensation.

26. Plaintiffs’ property includes but is not limited to the fee title to the property underlying the former railroad easement.

27. The United States’ actions damaged Plaintiffs by taking a portion of Plaintiffs’ property and by diminishing the value of the remaining property and by attenuating delay damages based upon the delayed payment of compensation.

WHEREFORE, Plaintiffs respectfully request a monetary judgment in their favor representing the full fair market value of the property taken by the United States on the date it was taken, including severance damages, delay damages, interest, and costs and attorneys’ fees incurred by Plaintiffs and for such further relief as this Court may deem just and proper.

Date: May 25, 2018

Respectfully submitted by:

STEWART, WALD & MCCULLEY, LLC

By /s/ Steven M. Wald

Steven M. Wald  
Michael J. Smith  
12747 Olive Blvd., Suite 280  
Saint Louis, MO 63141  
Telephone: (314) 720-0220  
Facsimile: (314) 899-2925 (facsimile)  
wald@swm.legal  
smith@swm.legal

-and-

Thomas S. Stewart  
Elizabeth G. McCulley  
2100 Central St., Suite 22  
Kansas City, MO 64108  
Telephone: (816) 303-1500  
Facsimile: (816) 827-8068 (facsimile)  
stewart@swm.legal  
mcculley@swm.legal

ATTORNEYS FOR PLAINTIFFS